

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 25-26, 2005

Reference No.: 2.4a.(3)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla Rhinehart
Division Chief
Right of Way

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19062, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19062 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19062 - President and Fellows of Harvard College

08-SBd-138-KP R28.15- Parcels 17055-1, 3; 17452-1, 2 - EA: 437009 - Certification Date: 05/27/05 - RTL Date: 05/30/05 - (Conventional Highway - realignment of State Route 138). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located near the unincorporated area of San Bernardino County commonly known Summit Valley, approximately 230 Meters Northeast of Southern California Edison Tower M5-T4. APN 0351-151-03.

SUMMARY OF ISSUES

The property owners, President and Fellows of Harvard College (Harvard) through their representatives do not contest the need for the project. However, they have expressed concerns regarding access to their property and contend that the Department has not made a valid offer of just compensation as required by Government Code Section 7267.2.

The following is a detailed description of the concerns expressed by representatives of Harvard, followed by the Department's response.

Owner:

The Department's valuation of the subject parcel is not consistent with other similar parcels in the area.

Department Response:

The comparative property values supplied by the owner's representative are from locations far removed from the project area and are from areas that have different levels of development. The subject parcel is much more remote than those examined by the owner. In addition, environmental concerns in the area also greatly affect property values. Environmental concerns include Native American archeological sites, the presence of "Waters of the United States", and various species of concern and their habitats. Full valuation, consistent with our appraisals, has been offered to Harvard.

The Department has complied with Government Code Section 7267.2 by having a fair market value appraisal prepared which is determined to be just compensation, and has made an offer to the owners of record to acquire the property in the full amount of that appraisal. The concerns raised by the property owner are compensatory in nature and outside the purview of the Commission.

Owner:

The width of the proposed access openings are not sufficient for compliance with San Bernardino County local street width requirements.

Department Response:

The width of the proposed access openings have been modified from thirty feet to fifty feet to be consistent with San Bernardino County road standards.

Owner:

The excess land created by the project (Excess Parcel Number 4622-01-03) should be offered to the adjacent owners (Harvard) in exchange for the property acquisition needed by this project and not sold in public auction, thereby creating an intervening ownership between the subject property and the proposed highway right of way.

Department Response:

On April 21, 2005, based upon an approved Excess Land Appraisal, the Department made an offer of this excess land to Harvard. Should the offer be accepted, this transaction is subject to approval by the California Transportation Commission (Commission).

Owner:

The loss of "highway frontage" along the southerly remainder of the subject parcel is detrimental to future development. If frontage cannot be perpetuated, the owner would prefer the Department's right of way to remain as purchased in 1972, without a potential intervening owner.

Department Response:

A new access opening has been provided along the proposed right of way adjacent to Excess Land Parcel Number 4622-01-03, and an easement will be reserved at this location across the excess parcel to provide access to the Harvard property in the event the excess parcel is either retained by the Department or sold to a party other than Harvard. The right of way cannot remain as purchased in 1972 due to environmental constraints associated with that alignment and the need to shift the alignment to the north away from Crowder Creek. Loss of "highway frontage" that may potentially impact future development of the property is a compensation issue and therefore outside the purview of the Commission.

Owner:

The pavement removal and re-grading of portions of existing State Route 138 is unnecessary.

Department Response:

The removal of pavement and re-grading of the existing highway is necessary to comply with the approved Environmental Document and environmental mitigation measures, which call for replanting in the area of the existing roadbed. Harvard understands the environmental need and has acquiesced to the proposed mitigation.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA		08-SBD-138-KP 27.5/30.9 (PM 17.1/19.2)	
<u>Location:</u>	State Route 138 in the County of San Bernardino		
<u>Limits:</u>	From 3.0 kilometers (1.8 miles) east of Interstate 15 to 0.2 kilometers (0.1 mile) west of Summit Post Office Road		
<u>Contract Limits:</u>	Same as above.		
<u>Cost:</u>	Construction \$20,726,000	--	Right of Way \$150,000
<u>Funding Source:</u>	2004 SHOPP 201.010/HB1 – Safety Improvements		
<u>Number of Lanes:</u>	Existing:	Two mixed flow lanes with no paved shoulders	
	Proposed:	Two mixed flow lanes with two 2.4 meter (8 feet) paved shoulders	
<u>Proposed Major Features:</u>	Interchanges:	None	
	Bridges:	Hog Ranch Creek Bridge – Bridge # 54-1218 Miner's Shack Creek Bridge – Bridge # 54-1219 Double Drain Creek Bridge – Bridge # 54-1220	
	Other:	Off-Highway Vehicle (OHV) Crossing. Hydraulic detention basin	
<u>Traffic:</u>	Existing:	2,400 ADT (2003)	
	Proposed:	11,000 ADT (2010) 22,500 ADT (2025)	
PARCEL DATA			
<u>Property Owner:</u>	President and Fellows Of Harvard College		
<u>Parcel Location:</u>	Approximately 3.2 kilometers (2.0 miles) east of Interstate 15 in unincorporated San Bernardino County along State Route 138		
<u>Present Use:</u>	Vacant land		
<u>Area of Property:</u>	32.787 acres (13.269 hectares)		
<u>Area Required:</u>	Parcel 17055-1	Fee	0.095 acres (0.038 hectares)
	Parcel 17055-3	Fee	0.243 acres (0.098 hectares)
	Parcel 17452-1	Fee	1.350 acres (0.547 hectares)
	Total		1.688 acres (0.683 hectares)
	Parcel 17452-2	TCE	0.056 acres (0.022 hectares)
	Total		0.056 acres (0.022 hectares)

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met on April 19, 2005 in San Bernardino. The Panel members consisted of Barry Cowan, Department of Transportation (Department) Headquarters (HQ's) Right of Way; Patrick Barney, Department Los Angeles Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. The representative appearing on behalf of the President and Fellows of Harvard College was Alfred Martini, California Representative for President and Fellows of Harvard College (Harvard).

Harvard's objection is based on the opinion that the offer made by the Department does not meet the requirements of California Government Code Section 7267.2, as an offer of just compensation. Harvard does not contest the need for the project.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

The existing alignment of State Route (SR)-138 traverses mountainous terrain and consists of horizontal curves with radii as small as 15 meters (m), grades as steep as 15% and vertical curves less than 15 m in length. The existing pavement is 6.4 m to 8.2 m in width, with no paved shoulders and narrow or non-existent earth shoulders. There are few turnouts, no passing zones, the structural section is showing signs of distress and major drainage flows overtop the roadway resulting in lengthy road closures.

The accident rate is 3.8 times the statewide average for similar two-lane highways. The primary causes include vehicles crossing into the opposing lane and vehicles running off the roadway. An analysis of the accident data revealed that the accidents are not concentrated at any particular location but occur throughout the entire length of the project.

The current average daily traffic (ADT) is 2,400 and the forecasted year 2025 ADT is 22,500. The significant growth can be attributed to several developments near the junction of SR-173 that combine residential, commercial and recreational uses such as the planned Rancho Las Flores (RLF) Development, a 15,000-unit community with an anticipated population of 41,000.

The project is considered to be one of the Department's highest priority projects due to the high accident rate. In addition, SR-138 is the primary access to the High Desert cities of Victorville, Hesperia and Apple Valley when Interstate 15 (I-15) is closed through the Cajon Pass. SR-138 also serves as a primary emergency evacuation route for the San Bernardino Mountains, which has suffered from wildfires, floods and frequent closures due to storm damage on State Routes 18, 38, 138, 173 and 330.

PROJECT PLANNING AND LOCATION

The project is located on SR-138, 3.0 kilometers (km) east of I-15 near the city of Hesperia in San Bernardino County. The proposed two-lane realignment will complete a 3.4 km portion of a 6.3 km four-lane project initiated by the U.S. Forest Service in 1970 to improve SR-138 between I-15 and Summit Post Office Road.

On April 29, 2004, a Public Hearing was held and on August 20, 2004, the Negative Declaration/Finding of No Significant Impact (ND/FONSI) was approved.

The current Construction Cost is estimated at \$20,726,000.

The proposed alignment for SR-138 is controlled by the location of the completed four-lane section (west end), Crowder Creek (south side), two-36" natural gas lines (north side), two electrical transmission lines and the BNSF railroad (east end, north side).

Five alternatives were considered during the PA&ED process:

1. two-lane new alignment (selected)
2. four-lane new alignment

The four-lane alternative was eliminated from consideration since it would be capacity increasing, considered growth inducing by the environmental resource agencies and not appropriate as a safety improvement. While local interests still favor a four-lane improvement, for such a project to receive future consideration, it will have to be under sponsorship of private development contributors and/or the regional transportation planning agency.

3. Improvements along existing alignment

Improving the existing alignment is considered impractical due to the existing horizontal curves with radii as small as 15 m, steep grades of 15%, vertical curves less than 15 m in length and cut slopes steeper than 1:1. Therefore, upgrading this segment to meet current design standards (e.g., sight distance, superelevation, horizontal alignment, grade, etc.), while maintaining the existing alignment, would require numerous mandatory design exceptions, would disrupt traffic and could potentially impact Crowder Creek.

4. Portion of new alignment in Crowder Creek

A 660 m (2,165 feet) portion of the proposed realignment, from approximately KP R29.5/R30.1 (PM R18.3/R18.7), crossed the upper reach of Crowder Creek where riparian habitat, suitable for the Least Bell's Vireo, exists. USFWS, CDFG, and USFS raised concerns regarding this portion of the realignment and its potential impacts to Crowder Creek. As a result, this portion of the realignment was moved 65 m (213 feet) north of the previously proposed location to avoid impacts to Crowder Creek.

5. No Build

The “No Build” alternative is not considered a viable alternative because of the history of accidents and the high Safety Index.

The Negative Declaration/Finding of No Significant Impact was approved on August 20, 2004.

The project is programmed in the 2004 SHOPP and the current Construction Cost is estimated at \$20,726,000 with an additional \$150,000 estimated for right of way acquisition.

NEED FOR SUBJECT PROPERTY

The proposed two-lane alignment cannot be accommodated within the right of way purchased in 1972 due to the environmental impacts associated with Crowder Creek and the requirement to shift the alignment away from the Creek. In addition, the subject property straddles this right of way and any attempts to shift the alignment would shift the right of way need to the unaffected side. Furthermore, the mountainous terrain and the physical constraints are so significant that the smallest change in the alignment would require complete redesign and reevaluation of the environmental document.

The following is a detailed description of the concerns expressed by representatives of Harvard, followed by the Department’s response.

Owner:

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Department Response:

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The Department has complied with Government Code Section 7267.2 by having a fair market value appraisal prepared which is determined to be just compensation, and has made an offer to the owners of record to acquire the property in the full amount of that appraisal. The concerns raised by the property owner are compensatory in nature and outside the purview of the Commission.

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Department Response:

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PARCEL DESCRIPTION

Parcel Numbers 17055 and 17452 are undeveloped land in a rural area of San Bernardino County. They consist of portions of fairly level land crossed by existing SR-138, Southern California Edison high-voltage transmission lines, two Southern California Gas 36" natural gas lines, and Crowder Creek. Crowder Creek has been designated as "Waters of the United States" and flows through a fairly deep (over ten meters) natural channel.

Current access from the northwest is via various dirt paths that cross previously acquired access control and terminate at existing SR-138. The proposed project provides for a permanent access point to be created on the northwest side of the future highway to service the remainder parcel.

Current access from the southeast is via uncontrolled existing SR-138. Title to existing SR-138 in this area has been by prescriptive use and Harvard has been using existing SR-138 as access to their property. Upon completion of the proposed project Harvard will be provided legal access to their property by way of an easement across Excess Land Parcel No. 4622-01-03.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

PANEL RECOMMENDATION

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

BARRY COWAN, Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON APRIL 19, 2005**

Barry Cowan, Headquarters Right of Way, Panel Chair
Patrick Barney, Los Angeles Legal Office Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

Alfred Martini, California Representative for President and Fellows Of Harvard

Patty Romo, District 8, Deputy District Director – Design
Teresa Arias, Southern Region Right of Way Division Chief
Patricia Smith, Southern Region Right of Way Project Delivery Manager
Yoshiko Henslee, District 8, Senior Right of Way Agent
Elwood Hampton, District 8 Right of Way Agent
Ken Gildersleeve, District 8 Right of Way Agent
John Ashton, District 8, Project Manager
Christy Connors, District 8, Design Support Manager
Luis Betancourt, Headquarters, Design

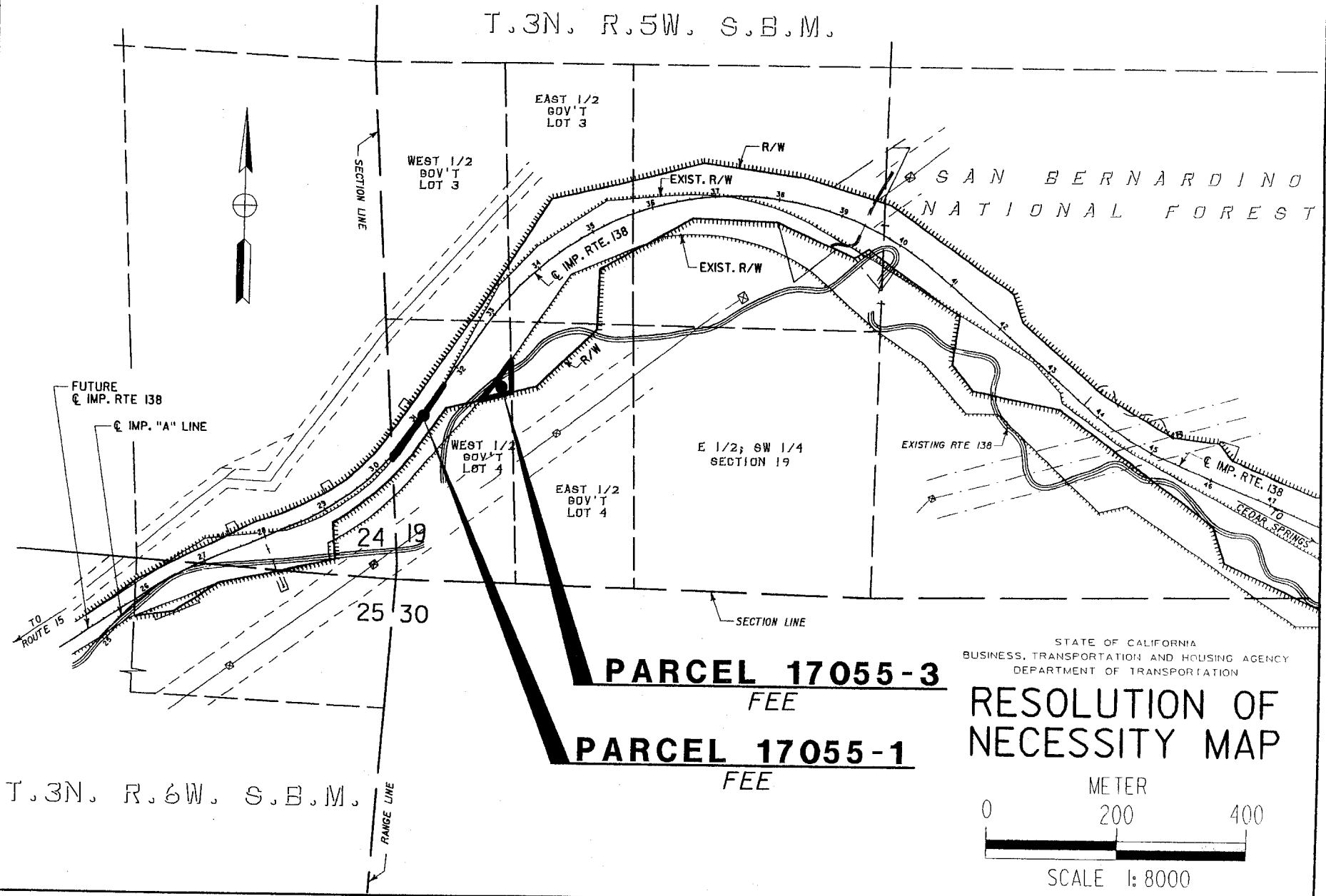
COUNTY OF SAN BERNARDINO



DIST.	COUNTY	ROUTE	KILOMETER POST
08	SBd.	138	28.15

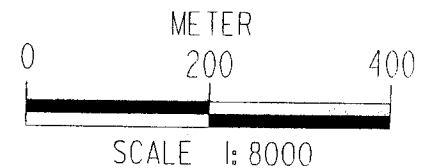
EXHIBIT "A"

T.3N. R.5W. S.B.M.



STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

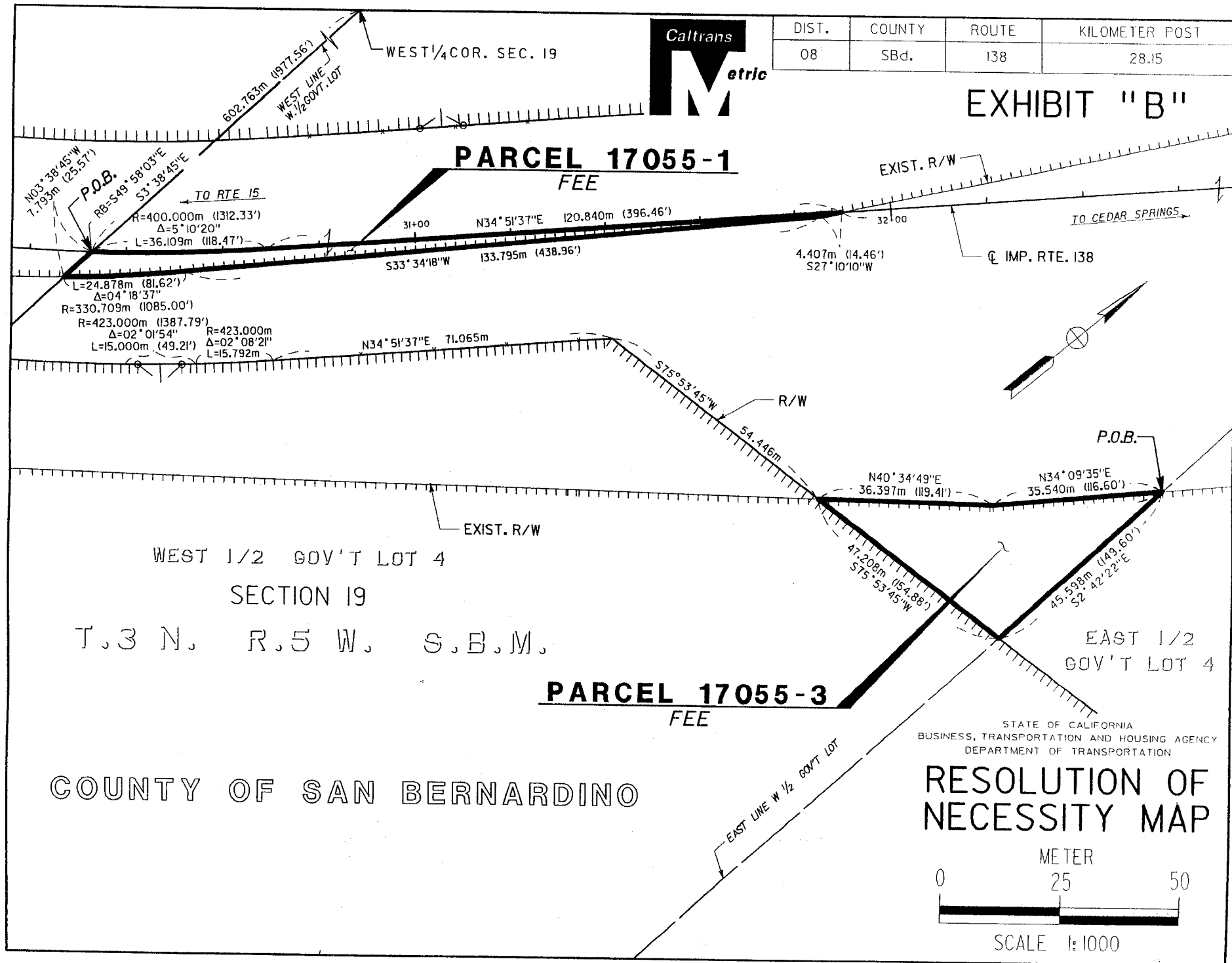
RESOLUTION OF NECESSITY MAP





DIST.	COUNTY	ROUTE	KILOMETER POST
08	SBd.	138	28.15

EXHIBIT "B"

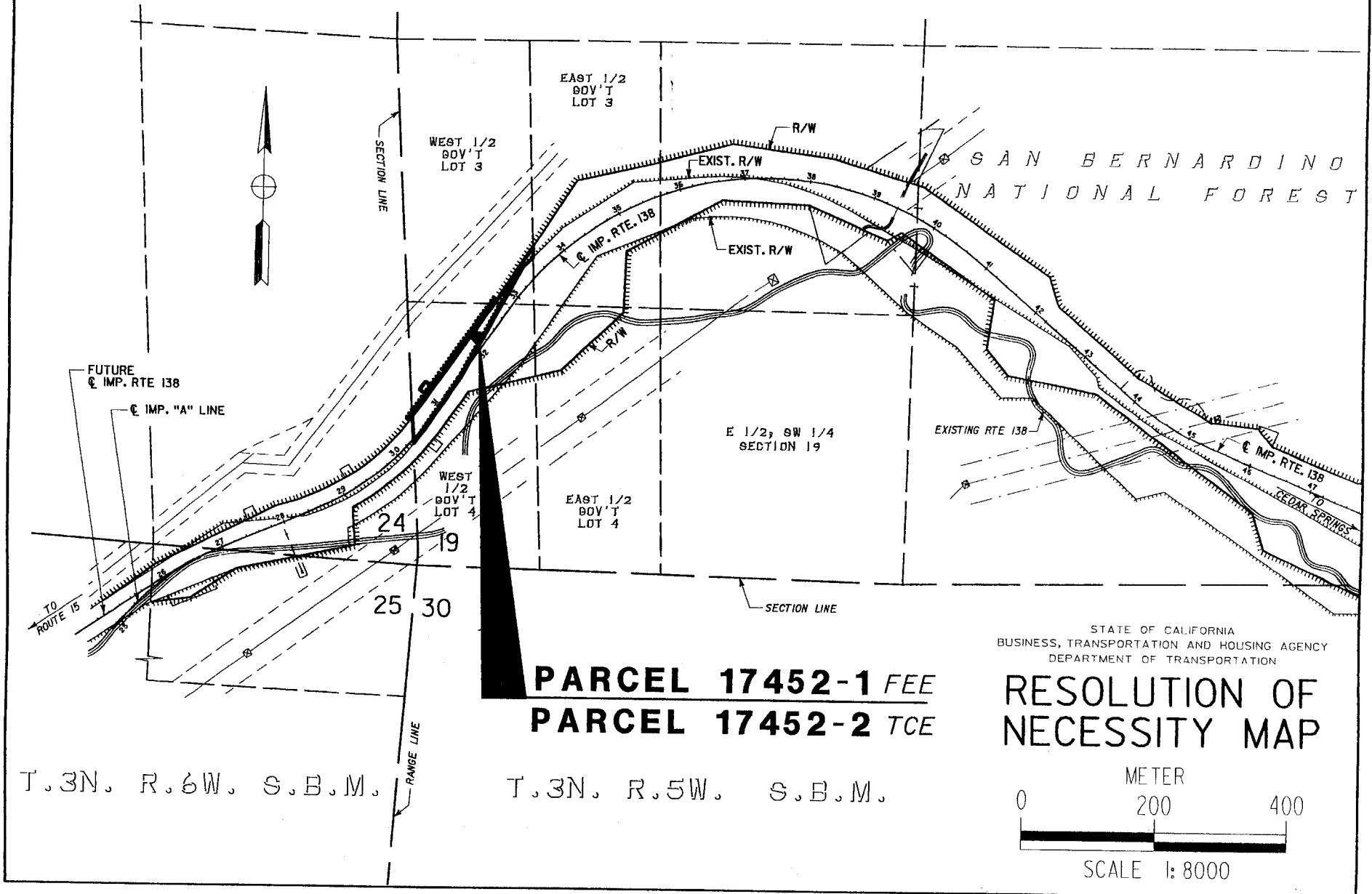


COUNTY OF SAN BERNARDINO



DIST.	COUNTY	ROUTE	KILOMETER POST
08	SBd.	138	28.15

EXHIBIT "A"



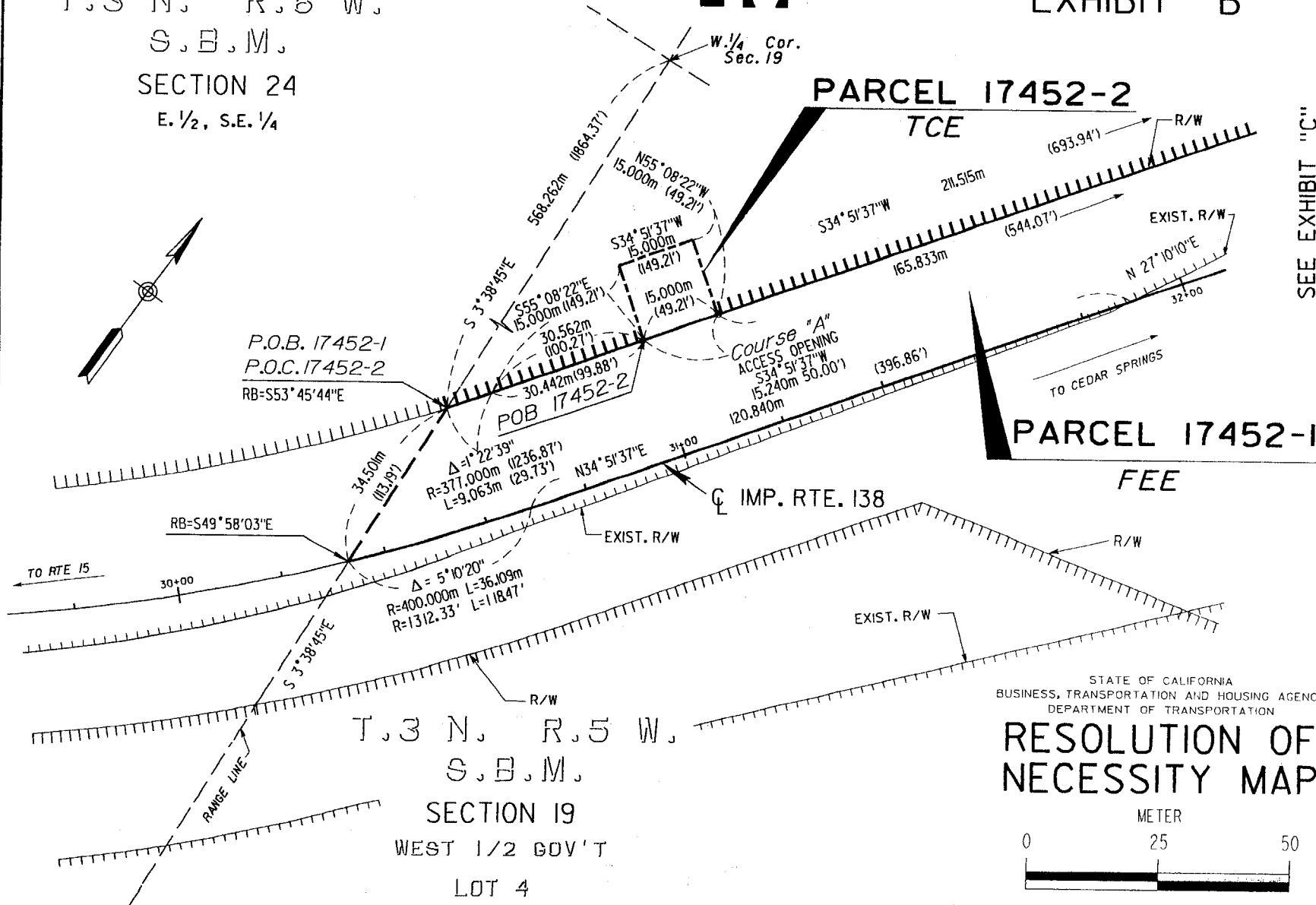


DIST.	COUNTY	ROUTE	KILOMETER POST
08	SBD	138	28.15

T.3 N. R.6 W.
S.B.M.
SECTION 24
E. 1/2, S.E. 1/4

EXHIBIT "B"

SEE EXHIBIT "C"



T.3 N. R.5 W.
S.B.M.

SAN BERNARDINO NATIONAL FOREST



DIST.	COUNTY	ROUTE	KILOMETER POST
08	SBD	138	28.15

EXHIBIT "C"

SECTION 19

WEST 1/2 GOV'T

LOT 3

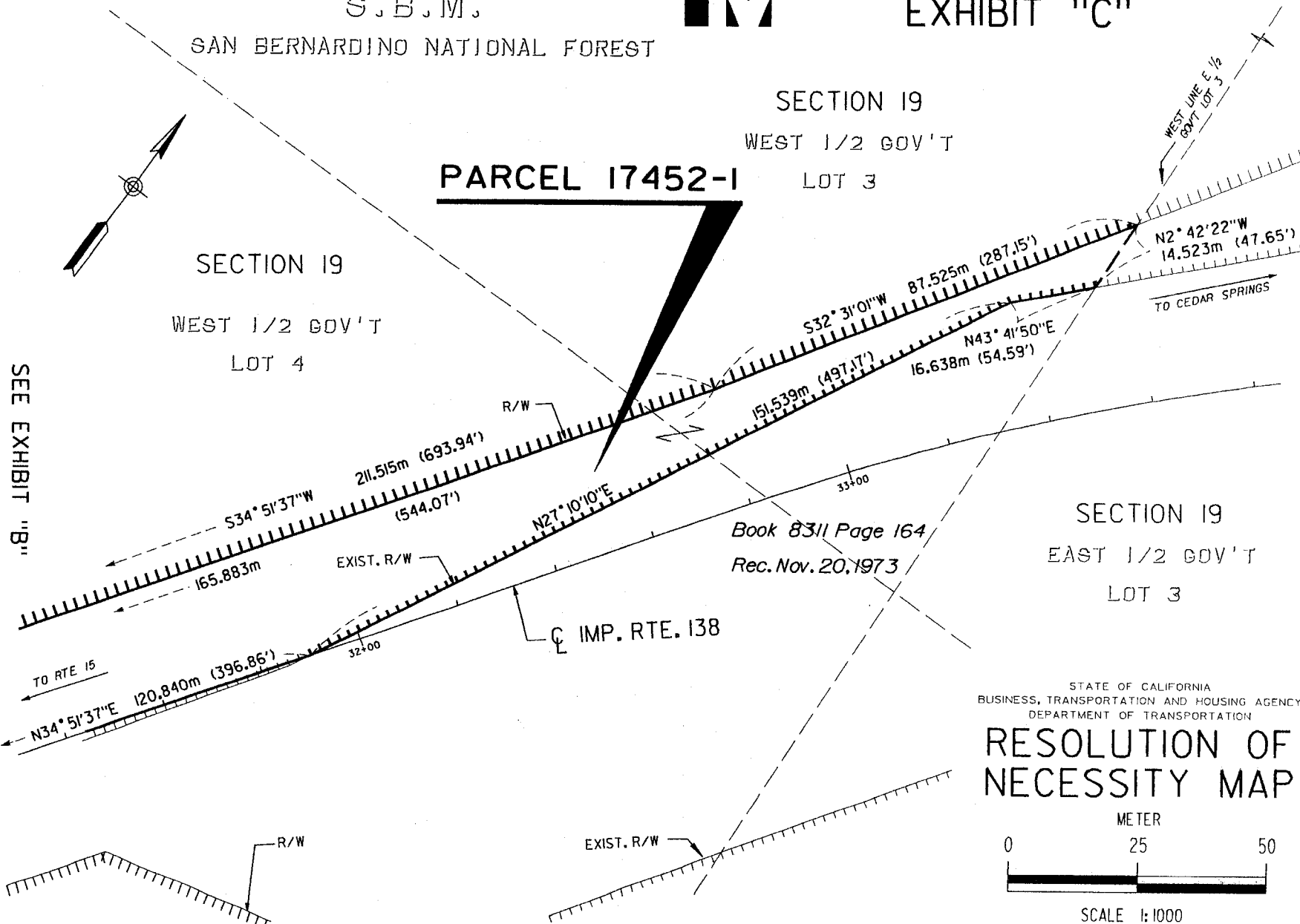
PARCEL 17452-1

SECTION 19

WEST 1/2 GOV'T

LOT 4

SEE EXHIBIT "B"



SECTION 19

EAST 1/2 GOV'T

LOT 3

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RESOLUTION OF
NECESSITY MAP



SCALE 1:1000